

146247



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Gould Metal Specialties Inc.

File: B-246686

Date: March 27, 1992

Arnold R. Shapack for the protester,
Gregory D. Rothwell, Esq., and Donald M. Suica, Esq.,
Department of the Treasury, for the agency,
David Hasfurther, Esq., and Michael R. Golden, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Protester's hand-carried bid which was delivered to the mailing address, rather than the address for hand-carried bids, was properly rejected as late where there is no evidence of government mishandling after receipt.

DECISION

Gould Metal Specialties Inc. protests the rejection of its bid under invitation for bids (IFB) No. IRS-91-058, issued by the Internal Revenue Service (IRS), Department of the Treasury, to procure metal racks for the display of Federal income tax forms in libraries. Gould's bid was rejected because it was not received by the contracting officer until after bid opening.

Gould primarily contends that its bid was mishandled by the agency after its receipt in the agency's mail room and, therefore, that the agency improperly failed to consider the bid for award. Gould also argues that insufficient time was provided by the agency for the proper preparation of bids, that the specifications were defective, and that the awardee's prices were unreasonable. Gould requests that if award cannot be made to the company, the procurement should be resolicited after the appropriate revision of the specifications.

We deny the protest in part and dismiss it in part.

The IFB was issued on August 17, 1991. Unit and total prices for the racks were to be submitted by bidders for a base period and for 2 option years. Submission of a sample of the rack a bidder would furnish was also required prior

to bid opening. The IFB contained two addresses to which bids could be submitted: one for bids sent by mail and one for bids that were hand delivered. The address for hand-carried bids was in a different building from the mail address. Bid samples were to be submitted to a third address. The IFB was amended three times prior to the 3:00 p.m. bid opening on September 27. Gould's bid was addressed to and delivered by Federal Express on September 27 to the agency's mail room. On the face of Gould's bid package were set out the IFB number, the bid opening date (not time), the name of the recipient (the contract specialist), and the recipient's telephone number (the contracting officer's). As of bid opening, six bids had been received. Four bids, including Gould's, were subsequently received late. Gould's bid, received in the agency mail room on September 27 (Friday), was received at the location designated for hand-carried bids on the morning of September 30 (Monday). Of the six bids received, five were rejected as nonresponsive. Award was made to the only responsive bidder on September 30.

Gould contends that its bid was received late by the contracting officer solely because of mishandling that occurred after the receipt of the bid in the agency's mail room. Gould states that it spoke with a specific mail room employee at approximately 10:00 a.m. on September 27 and was told both that its bid had been received and that it would be delivered to the contracting officer prior to bid opening. According to Gould, notwithstanding the information identifying the package as a bid and the fact that the mail room had received the bid at least 5 hours prior to bid opening, mail room personnel simply delivered the bid as they would have any other piece of mail. Gould concludes that the agency mail room personnel's failure to deliver its bid prior to bid opening and the agency's failure to have instituted procedures that would have ensured timely delivery from the mail room of bids such as Gould's constitute government mishandling. Accordingly, Gould argues that its bid was improperly rejected.

As a general rule, bidders are responsible for delivering their bids to the proper place at the proper time. International Steel Erectors, B-233238, Feb. 13, 1989, 89-1 CPD ¶ 146. While a late bid, hand-carried by Federal Express or other commercial carrier, may not be considered where it is late due to the failure of the bidder to fulfill its responsibility for ensuring timely delivery to the designated location, it may be considered if the sole or paramount cause of its late receipt in the bid opening room is due to government mishandling after timely receipt at the agency. Weather Data Servs. Inc., B-238970, June 22, 1990, 90-1 CPD ¶ 582.

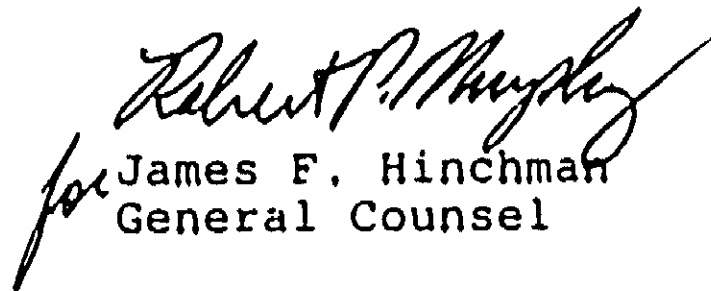
To establish that government mishandling was the sole or paramount cause of the late receipt of the bid, the bidder must first establish that it did not significantly contribute to the late delivery by not allowing enough time to permit a timely submission. Wyatt and Assocs., B-243349, July 1, 1991, 91-2 CPD ¶ 5. Here, the IFB provided a specific address for delivery of hand-carried bids. Gould's package was labeled with the mail address, not the one for hand-carried bids. Where, as here, the protester dispatches its agent--a commercial carrier--to an address other than that designated for hand-carried bids, it bears the risk of untimely receipt, if the time spent by the agency rerouting the bid package to the proper location is reasonable. See Nanco Labs, Inc., B-220663; B-220664, Nov. 27, 1985, 85-2 CPD ¶ 613.

Gould asserts that the mail room mishandled its clearly marked bid by not forwarding it within a reasonable time. Gould states that at approximately 10:00 a.m. on September 27, it spoke with a mail room employee and was told that the bid had been received and that it would be forwarded to the contracting officer before bid opening. It also submits a letter from Federal Express stating that its records show delivery was made at 10:00 a.m. However, the IRS mail room employee does not remember the conversation with the protester about its bid. Further, the IRS mail room maintained Form 8740, Receipt for Express Mail, which simply shows that Gould's bid package was received on September 27. The IRS receipt does not establish the precise time of delivery. Since the package was not marked with the time of bid opening and delivered to the mailroom on the day of bid opening because of the bidders failure to use the hand-carried bid address, we think the protester assumed the risk of the bid not arriving timely at the bid opening. We have no evidence that the package was unusually delayed in the mail room or that the mail room personnel acted in other than their normal course of business in delivering the package. A bidder's error in sending its bid to the wrong location on the day of bid opening does not obligate the government to conduct a special messenger service. Gould has not established that the late receipt was caused by government mishandling. See Western Alaska Contractors, J.V., B-241839, Mar. 5, 1991, 91-1 CPD ¶ 248; International Steel Erectors, supra; Data Monitor Sys., Inc., B-220917, Jan. 23, 1986, 86-1 CPD ¶ 82.

The remaining portions of Gould's protest are untimely. Gould's protests against the allegedly defective specifications and against the agency's alleged failure to provide sufficient time for bid submission concern improprieties apparent from the face of the solicitation. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991), a protest

against defects in an invitation for bids must be filed prior to bid opening. Here, Gould's protest was filed substantially after bid opening. Mid South Indus., Inc., B-216281, Feb. 11, 1985, 85-1 CPD ¶ 175. Gould's protest that the prices of the awardee are unreasonable had to be submitted within 10 working days of when Gould learned of the award price (and thus the basis of its protest on this matter). 4 C.F.R. § 21.2(a)(2). Gould knew the award price on November 12, but did not protest its alleged unreasonableness until it submitted comments on the agency report to our Office on January 21, 1992. See Loral Packaging Inc., B-221341, Apr. 8, 1986, 86-1 CPD ¶ 347.

The protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel